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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of the Commission's)
Rules to Establish New Personal)
Communications Services)

GEN Docket No. 90-314

**COMMENTS AND OPPOSITION OF GENERAL COMMUNICATION,
INC., ON THE PETITIONS FOR RECONSIDERATION**

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December 30, 1993

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SUMMARY

General Communication, Inc. (GCI), hereby submits these comments in partial support and in partial opposition to the numerous petitions filed for reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.

GCI supports the various petitions that requested an increase in the maximum allowable base station power. The power limit should be raised to 1000 watts ERP to provide more economical and widespread deployment of PCS, particularly in less populated areas, while reducing overall interference and average radiated power.

GCI also supports the petition of MCI which, like the petition of GCI, requested that nationwide dominant cellular carriers be excluded from one of the 30 MHz MTA blocks. Excluding the dominant cellular carriers from Block A will promote both competition and the development of the full promise of PCS.

GCI opposes the petitions filed by cellular carriers, including rural telephone companies with cellular operations, that seek rule changes that would allow cellular companies to dominate the personal communication services marketplace. Particularly, the spectrum allocation should not be revised and divided into numerous smaller blocks; the 10 MHz limit on cellular license holders should not be increased; and, rural telephone companies should not be exempt from restrictions applicable to cellular license holders.

GCI supports fair and equitable ownership attribution rules. The ownership attribution rule for determining ownership of cellular licenses should not be increased significantly. In the event that the Commission does modify the cellular ownership attribution standard, however, it is most important that the Commission apply the same standard for determining PCS license ownership.

Cellular carriers should not be granted a grace period in which to divest cellular assets. The grace period requested by cellular carriers could significantly delay the provision of PCS. Further, cellular licensees should not be granted tax certificates for divesting their cellular licenses in order to participate in PCS. Cellular carrier have ample opportunity to participate in PCS without divesting assets.

The build-out requirements should not be modified. Stringent build-out rules will bring the full promise of PCS to the greatest number of people, across all areas, as soon as possible.

Partitioning should not be permitted because it will result in numerous small, independent systems within an area; entities interested in serving portions of an area should form a consortium and provide uniform service across the area. If partitioning is allowed, build-out requirements should apply to the entire MTA or BTA area. If build-out requirements are applied only to partitioned areas, service to less populated areas may be unduly delayed.

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**COMMENTS AND OPPOSITION OF GENERAL COMMUNICATION, INC.,
ON THE PETITIONS FOR RECONSIDERATION**

Pursuant to 1.429 of the Commission's Rules, General Communication, Inc. (GCI), hereby submits these comments in partial support and in partial opposition to the numerous petitions filed for reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.¹

GCI supports the various petitions that requested an increase in the maximum allowable base station power. GCI also supports the petition of MCI which, like the petition of GCI,² requested that nationwide dominant cellular carriers be excluded from one of the 30 MHz MTA blocks.

GCI opposes the other petitions for reconsideration filed herein. Most particularly, GCI opposes the petitions filed by cellular carriers, including rural telephone companies with cellular operations, that seek rule changes that would allow cellular companies to dominate the personal communication

¹Amendment of the Commission's Rules to Establish Personal Communications Services, GEN Docket No. 90-314, FCC 93-451, released October 22, 1993 (Second Report and Order).

²See, GCI Petition for Reconsideration, filed December 8, 1993, herein.

services (PCS) marketplace. None of the requested changes to the spectrum allocation, limits applicable to cellular license holders, or cellular license ownership attribution rules are in the public interest. The ownership attribution rule for cellular operations should be comparable to, and no more liberal than, the ownership attribution rule applicable to PCS licenses. Cellular carriers should not be allowed a grace period or be granted tax certificates, build-out requirements should not be modified, and partitioning should not be allowed.

I. The Maximum Base Station Power Limit
Should Be Increased To 1000 Watts ERP.

Numerous parties³ requested that the maximum permissible base station power limit be increased substantially. Although the various parties suggested different maximum, the diversity of interests supporting an increase in the maximum base station power limits demonstrates that an increase is not designed to enhance the position of any one segment of the industry relative to other segments but, instead, is in fact in the public interest and would promote the provision of PCS. GCI supports an increase in the power limit to 1000 watts ERP (1600 EIRP).

The Commission has recognized that PCS embodies a wide range of services and that PCS providers should be given a maximum degree of flexibility to meet the needs of users.⁴ Unfortunately, the base station power

³See, Petitions for Reconsideration of Ameritech, MCI, Motorola, Inc., Northern Telecom Inc., Pacific Bell/Nevada Bell, PacTel Corporation, and Telocator, filed herein.

⁴Second Report and Order, paragraph 23.

limit of 100 watts would significantly reduce the rapid and widespread deployment of PCS networks across the nation. Increased power limits will provide for more economical and widespread deployment of PCS, particularly in less populated areas, while reducing overall interference and average radiated power.⁵ For the reasons more fully set forth in the various petitions already cited, GCI requests that the Commission grant reconsideration of the 100 watt base station power limit.

II. Existing Cellular Carriers Should Not Be Allowed To Dominate The PCS Marketplace.

As GCI discussed in previous pleadings, the existing cellular carriers have an incentive to achieve a dominant position in the cellular marketplace and to hinder other entities from developing PCS to its full potential. The basis of this incentive is simple: cellular carriers now have the advantage of a duopolistic marketplace that favor carriers, and the carriers do not want to lose this position. The petitions for reconsideration filed by cellular carriers in this proceeding again attempt to maintain and extend the advantages of the cellular carriers; these petitions must be rejected.

A. The Spectrum Allocation Should Not Be Revised And, Most Particularly, Should Not Be Divided Into Numerous Smaller Blocks.

GCI opposes the petitions to reduce the size of the spectrum block allocations and to reduce the licensed geographic areas. The various petitions from cellular license holders ranged from the extreme of breaking the

⁵See, Affidavit of Robert A. Voss, MCI Petition for Partial Reconsideration and Clarification, Exhibit B, filed herein.

spectrum into 10 MHz blocks covering BTAs,⁶ to licensing a combination of 10 and 20 MHz blocks covering BTAs,⁷ to licensing six-20 MHz blocks on a BTA or MSA basis.⁸ These petitions should be denied.

The requested reductions in the size of the PCS spectrum and geographic areas would ensure that the full promise of PCS is never realized. That may well be the intent of the cellular carriers but it is not in the public interest. Having themselves been limited to 10 MHz of spectrum, cellular providers are attempting to limit other parties to small blocks of spectrum. The cellular providers will combine 10 MHz of additional spectrum with their existing allocation of 25 MHz, and for that reason it is important to provide 30 MHz spectrum block PCS licenses so that new entrants can compete with the cellular providers.

GCI was not entirely satisfied with the Commission's spectrum allocation, and GCI would have preferred fewer blocks, each with a greater amount of spectrum. However, the decision of the Commission does strike a balance to accommodate diverse interests and, additionally, allows aggregation of spectrum if that is the most valued use. In the various petitions for reconsideration, arguments range from eliminating 30 MHz

⁶See, Petition for Reconsideration of George E. Murray, filed herein.

⁷See, Petitions for Reconsideration of Nextel Communications, Inc. and Cellular Telecommunications Industry Association, filed herein.

⁸See, Petitions for Reconsideration of BellSouth Corporation/BellSouth Telecommunications, Inc./BellSouth Cellular Corp. (BellSouth), Bell Atlantic Personal Communications, Inc. (Bell Atlantic), and Point Communications Company, filed herein.

blocks because they are unnecessarily large and wasteful⁹ to eliminating 10 MHz blocks because they are too small to be of any value;¹⁰ and, included other arguments for increasing block sizes to 40 MHz.¹¹ This diversity of arguments may demonstrate that a diversity of services may result from the allocation of varying spectrum blocks. There have been no new comments regarding spectrum allocation that justify a change in the Commission's initial decision, and the Commission should not revise the spectrum blocks at this time.

B. The 10 MHz Limit On Cellular License Holders Should Not Be Increased.

Numerous cellular operators requested the Commission to reconsider the decision to limit cellular operators to one of the 10 MHz block licenses within their cellular service area. In some instances the parties requested that cellular license holders be allowed to acquire a 20 MHz block and that the total spectrum accumulation be raised from 40 MHz to 45 MHz.¹² At least

⁹See, Petitions for Reconsideration of Nextel Communications, Inc. and Point Communications Company, filed herein.

¹⁰See, Petition of Reconsideration of Bell Atlantic filed herein.

¹¹See, Petitions for Reconsideration of PCS Action and Time Warner Telecommunications, filed herein.

¹²See, Petitions for Reconsideration of BellSouth and Bell Atlantic filed herein. The proposal of Bell Atlantic is unclear and might eliminate any restriction on cellular carriers and allow accumulation of 40 MHz in addition to the cellular spectrum; in this event, cellular carriers would be able to accumulate 25 MHz more than other entities. NYNEX Corporation requested total spectrum accumulation of 45 MHz, with cellular carriers limited to 20 MHz, but NYNEX did not request that all blocks be reduced to 20 MHz.

one party actually requested elimination of all restrictions on spectrum accumulation by cellular carriers.¹³ These petitions should be rejected.

In the Second Report and Order the Commission carefully considered whether, and to what extent, cellular providers should be allowed to participate in PCS. The Commission recognized arguments that cellular providers should be totally excluded from PCS within their service areas because of their existing spectrum allocation and the inherent advantages that they would have over other PCS licensees. Because of this “potential for unfair competition if cellular operators are allowed to operate PCS systems in areas where they provide cellular service,” yet “to permit local cellular operators to participate in providing PCS,” the Commission chose to limit the cellular operators to 10 MHz within their cellular service areas.¹⁴ The Commission also revised the cellular service rules to state explicitly that cellular licensees may provide any PCS-type services.¹⁵

The decision by the Commission provides cellular providers with ample opportunity to participate in PCS. By combining an additional 10 MHz with the existing 25 MHz allocation, the cellular providers can accumulate 35 MHz within their cellular service areas. This allocation, combined with the “head start” cellular carriers already have in marketing mobile services, already gives the cellular carriers a significant advantage over other PCS providers.

¹³See, Petition for Reconsideration of Radiofone, Inc. filed herein.

¹⁴Second Report and Order, paragraphs 105, 106.

¹⁵Second Report and Order, paragraph 111.

That advantage should not be increased by allowing cellular carriers to accumulate even more spectrum.

The proposals to establish all spectrum blocks with no more than 20 MHz of spectrum, to raise the general aggregation limit to 45 MHz, and to raise the in-region cellular limit to 20 MHz are particularly unreasonable. In addition to eliminating the 30 MHz blocks that present the biggest competitive challenge to the existing cellular entities, this clever proposal would enable cellular license holders to acquire a total of 45 MHz of spectrum, while still effectively limiting all other parties to 40 MHz because it is impossible to build 45 MHz of spectrum from 20 MHz blocks.

In summary, the Commission's decision limiting cellular operators to a 10 MHz block license within their service area is reasonable and should not be reconsidered.

C. Rural Telephone Companies Should Not Be Exempt From Restrictions Applicable To Cellular License Holders.

Rural telephone companies already have significant monopoly power within their service areas. Competitive access providers have generally not extended service to rural areas, and the Commission has exempted small rural telephone companies from rules designed to promote competition, such as collocation. The rural telephone companies also frequently provide cellular services within their local service area, further extending their monopoly power. Thus, within their service areas, rural telephone companies with cellular operations already dominate the market to an even greater extent than cellular providers in more populated markets.

These rural telephone companies that are already providing cellular service within their local service area are now attempting to extend that monopoly power even further, into PCS. Not content with the preferences that will enable rural telephone companies to obtain licenses in set-aside blocks with liberal payment terms, rural telephone companies¹⁶ holding in-region cellular licenses also petition to be exempt from the rule limiting cellular carriers to an additional 10 MHz within their cellular service area. These petitions should not be granted.

As discussed above, the 10 MHz limit strikes a reasonable balance between allowing participation in PCS by cellular carriers and guarding against "the potential for unfair competition if cellular operators are allowed to operate PCS systems in areas where they provide cellular service."¹⁷ The potential for unfair competition is at least as applicable to rural telephone companies within their service areas as it is to other cellular carriers. As just discussed, those rural telephone companies already dominate the local telecommunications market and the potential of unfair competition from these companies is very real. If rural telephone companies are exempt from the 10 MHz limitation, then within their service areas those companies will control the local exchange company, one cellular license, and more spectrum for PCS (used in conjunction with the cellular spectrum) than any other entity. In

¹⁶See, Petitions for Reconsideration of Iowa Network Services, Inc., OPASTCO, Rural Cellular Association and TDS, filed herein.

¹⁷Second Report and Order, paragraph 105.

these circumstances, the potential for any effective competition against the rural telephone company will be severely constrained.

For these reasons, the petitions to exempt the rural telephone companies from the 10 MHz limit applicable to cellular operators should be rejected.

**D. Nationwide Dominant Cellular Carriers Should
Be Excluded From One Of The 30 MHz Blocks.**

Not only should the Commission deny the various petitions by the cellular carriers designed to enhance their position in the PCS marketplace, the Commission should grant the petition of MCI to exclude the largest nationwide cellular carriers from one of the 30 MHz MTA blocks. GCI also addressed this matter in its own petition for reconsideration.¹⁸ As explained therein, the large nationwide cellular carriers have the incentive and the ability to thwart the best and most valued use of the PCS spectrum solely to prevent competition with developing nationwide cellular systems. The Commission should act to promote both competition and development of the full promise of PCS by excluding the largest nationwide cellular carriers from Block A.

**III. Fair And Equitable Ownership Attribution
Rules Should Be Retained.**

In its petition in this proceeding, GCI also requested reconsideration of the standard that would attribute all PCS interests of 5 percent or more to the holder of such interest. GCI argued that the standard should be raised to 20

¹⁸See, GCI Petition for Reconsideration, filed herein.

percent, in part because the Commission had adopted a 20 percent ownership attribution standard for cellular entities for the purpose of determining whether the 10 MHz restriction applies. GCI further argued that the same ownership attribution standard should apply to the cellular operations and PCS licenses.

Several cellular carriers¹⁹ recognized the incongruity of applying different ownership attribution standards to PCS and cellular licenses. Bell Atlantic stated "that the ownership attribution standard should be consistent in both directions is obvious...."²⁰ These and other cellular carriers²¹ also petitioned the Commission to increase the attribution standard for determining ownership of cellular licenses.

GCI believes that the 20 percent standard previously adopted by the Commission strikes a reasonable balance between allowing participation and preventing domination and, therefore, GCI does not agree that the 20 percent standard should be increased significantly. Although the 20 percent standard could be raised somewhat and remain reasonable, any large increase would tilt the balance too far away from preventing domination of the PCS market.

¹⁹See, Petitions for Reconsideration of Bell Atlantic and BellSouth filed herein.

²⁰See, Petition for Reconsideration of Bell Atlantic, p. 19.

²¹See, Petitions for Reconsideration of Alliance of Rural Area Telephone and Cellular Service Providers, Cellular Telecommunications Industry Association, Chickasaw Telephone Company/Cincinnati Bell Telephone Company/Illinois Consolidated Telephone Company/Millington Telephone Company/Roseville Telephone Company, Columbia Cellular Corporation, NYNEX Corporation, Pacific Telecom Cellular, Inc., PMN, Inc., filed herein.

GCI particularly opposes the proposal of at least one carrier²² that would multiply the percentage cellular ownership by the percentage cellular coverage and apply the restriction only if the product exceeds 20 percent. This proposal would amount to no effective restriction in many cases.

In the event that the Commission does modify the cellular ownership attribution standard, however, it is most important that the Commission apply the same standard for determining PCS license ownership. Whether the Commission adopts a standard of 20 percent ownership, a standard of actual legal control, or any other standard, there is simply no basis for adoption of different standards for the two comparable situations. A single ownership attribution rule must be applied fairly and equitably to determine ownership of both cellular and PCS licenses.

IV. Cellular Carriers Should Not Be Granted A Grace Period In Which To Divest Cellular Assets And Should Not Be Granted Tax Certificates For Divesting.

In comments in the Commission's proceeding establishing rules for competitive bidding for licenses,²³ several cellular carriers requested that they be allowed to bid on and acquire more than 10 MHz of spectrum, subject to later divesting cellular assets. In the petitions for reconsideration filed in this proceeding, cellular carriers²⁴ have now requested that the grace period for

²²See, Petition for Reconsideration of GTE Service Corporation filed herein.

²³Implementation of Section 309(j) of the Communications Act: Competitive Bidding, PP Docket 93-253, FCC 93-455 (released October 12, 1993).

²⁴See, Petitions for Reconsideration of McCaw Cellular Communications, Inc. and GTE Service Corporation filed herein.

coming into compliance extend all the way until the time the cellular entity initiates PCS service. These petitions should be rejected.²⁵

It is obvious that there will be delays in the provision of PCS if a cellular carrier is allowed to bid for, win, and obtain a PCS license but then must divests its cellular license before providing PCS. This is directly contrary to one of the goals of competitive bidding, the rapid deployment of PCS technology.²⁶ While GCI firmly believes that no grace period should be allowed for cellular carriers, a grace period that extends until the carrier begins providing PCS service is particularly objectionable.

The Commission should not adopt any rule that allows cellular providers to "lock up" large amounts of spectrum. Cellular providers who cannot comply with license restrictions prior to bidding will be able to acquire desired licenses in the post-auction market, after divesting cellular assets.

Several cellular carriers also argued that they should be granted tax certificates if they divest cellular interests in order to comply with PCS eligibility rules.²⁷ GCI disagrees. The Commission's rules provide cellular

²⁵GCI's opposition to a grace period for cellular carriers is not inconsistent with its own proposal in PP Docket 93-253 to allow a grace period for compliance with the 40 MHz spectrum accumulation limit. The grace period proposed by GCI would apply solely to allow entities to resolve problems over which they have little or no control or which result, inadvertently, because of the bidding sequence. Cellular entities have made a choice to own cellular services and they control the acquisition and disposition of those assets, yet they are requesting a grace period to come into compliance with limitations that they knowingly and intentionally exceed.

²⁶Section 309(j)(3)(A) of the Communications Act.

²⁷See, Petitions for Reconsideration of GTE Service Corporation and Comcast Corporation filed herein.

carriers with ample opportunity to participate in PCS without divesting assets. Such carriers can acquire a 10 MHz block and combine that with their existing 25 MHz block within their existing cellular service areas. Outside of existing cellular service areas the carriers have the same opportunity as any other entity. Thus, cellular carriers do not require the special rights that would be granted by tax certificates in order to participate in PCS.

V. **The Build-out Requirements Should
Not Be Modified.**

Several parties petitioned the Commission to reduce the build-out requirements,²⁸ and at least one party argued that existing cellular coverage should be counted toward fulfilling any PCS build-out requirement.²⁹ These positions should not be adopted.

GCI supports rules that will result in the full range of PCS being delivered to the greatest number of people, across all areas, as soon as possible. For this reason, GCI supports stringent build-out rules, and GCI believes that this is consistent with the desires of the Commission.

On the other hand, parties that seek lesser build-out requirements, with cellular build-out substituted for PCS, do not wish to see PCS deployed universally and in competition with cellular. This is contrary to the public interest.

²⁸See, Petitions for Reconsideration of BellSouth, Alliance of Rural Telephone and Cellular Service Providers, National Telephone Cooperative Association, Pacific Bell/Nevada Bell, filed herein.

²⁹See, Petition for Reconsideration of Sprint Corporation filed herein.

Certain comments requesting modification of the build-out rules clearly betray the commenters' supposed commitment to providing PCS in accordance with the public interest. The proposal to substitute cellular build-out for PCS demonstrates the intent to favor existing services over the new and improved services of PCS. The request of some rural telephone companies³⁰ to reduce the build-out requirements for rural areas is entirely inconsistent with the arguments that only rural telephone companies can be relied upon to deliver PCS to rural areas. Similarly, another request³¹ is to increase aggregation limits for all providers, including cellular operators, which would result in fewer providers, but to reduce build-out requirement for BTAs to only achieve service of 50 percent of the population within 10 years. These comments clearly demonstrate that the entities do not actually intend to deploy PCS rapidly, in all areas of the nation, consistent with the public interest.

The only argument in favor of lesser build-out requirements that has any validity is that some licensees, particularly those with small spectrum blocks, may provide niche services that are not intended for use across an area. GCI agrees that such situations may arise, but these situations should be handled through waivers rather than through a change in the rules. Such waivers should generally be available only for the 10 MHz spectrum blocks.

³⁰See, Petition for Reconsideration of National Telephone Cooperative Association filed herein.

³¹See, Petition for Reconsideration of Personal Network Services Corp. filed herein.

VI. Partitioning Should Not Be Permitted And, Particularly, Build-out Requirements Should Apply To An Entire MTA Or BTA Area Even If Partitioning Is Allowed.

Numerous parties requested that partitioning of PCS licenses areas be permitted.³² Some of these parties also requested that build-out requirements apply only to partitioned areas, not to the entire MTA or BTA area.³³ Neither of these requests should be granted.

Partitioning of PCS areas is not in the public interest because it would result in a multiplicity of very small, possibly incompatible systems. Partitioning would allow each interested entity within a BTA (or MTA) to obtain a very small piece of the area and operate it independently; it would be preferable to require these entities to form a consortium to provide PCS to the entire area. This would result in better quality service in the entire BTA or MTA.

Even more importantly, however, the Commission should reject all requests to apply build-out requirements to partitioned areas, without regard to whether the remainder of a MTA or BTA is being served. If build-out requirements were applied solely to partitioned areas, service to rural areas could be significantly delayed. This would be possible because a licensee could partition the licensed area, keeping the most populated portion and

³²See, Petitions for Reconsideration of McCaw Cellular Communications, Inc., National Telephone Cooperative Association, Columbia Cellular Corporation, Alliance of Rural Telephone and Cellular Service Providers, U. S. Intelco Networks, Inc., and Rural Cellular Association filed herein.

³³See, Petitions for Reconsideration of Columbia Cellular Corporation and Alliance of Rural Telephone and Cellular Service Providers filed herein.

complying with build-out requirements in that portion, but dispose of the less populated portions of the area to entities, perhaps to sham or dummy corporations, that are unwilling or unable to provide adequate service in those portions.

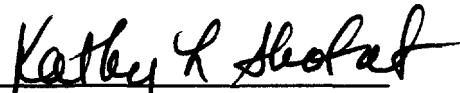
CONCLUSION

In its review of the petitions for reconsideration filed in this matter, the Commission should consider whether the requested changes are likely to promote the Commission's objectives for PCS, including the full and rapid deployment of PCS, as a competitive service, across all regions. The numerous requests by cellular carriers to change the rules are not consistent with these objectives and would, instead, lead to domination of PCS by

existing cellular carriers. On the other hand, excluding cellular carriers from Block A and increasing the base station power limit for all PCS providers are consistent with the objectives and would promote competitive, rapid deployment of PCS across the nation.

Respectfully submitted,

GENERAL COMMUNICATION, INC.

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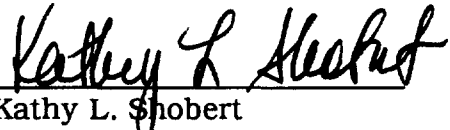
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December 30, 1993

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed December 30, 1993.

A handwritten signature in black ink, appearing to read "Kathy L. Shobert", written over a horizontal line.

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